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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/977,950 | 10/17/2001 | Shinichi Hamamoto | 500.34180CX2 | 4059 |
| 24956 | 7590 | 10/03/2005 | EXAMINER | |
| MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. | | | YAO, KWANG BIN | |
| 1800 DIAGONAL ROAD | | | ART UNIT | |
| SUITE 370 | | | PAPER NUMBER | |
| ALEXANDRIA, VA 22314 | | | 2667 | |

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

Office Action Summary

Application No.

09/977,950

Applicant(s)

HAMAMOTO ET AL.

Examiner

Kwang B. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-30 is/are allowed.
- 6) ☒ Claim(s) 11, 12, 31 and 32 is/are rejected.
- 7) ☒ Claim(s) 13-20 and 33-40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/560,011.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/5/04; 10/17/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11, 12, 31, 32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 6 of U.S. Patent No. 5,774,466 in view of Yamada (US 5,455,820).

Claims 11, 12, 31, 32 of the instant application disclose the following features: regarding claim 11, a cell delay variation regulator in a cell assembly and disassembly apparatus, comprising: a variation regulating buffer temporarily storing cells transmitted from a VPI/VCI separator; a variation waiting timer controlling a waiting time from the time a top cell of a burst is received to the time a reading operation of a cell from the variation regulating buffer starts; a cell preservation memory storing the latest cell transmitted from the VPI/VCI separator; a read out timer controlling intervals at which the cells are read from the variation regulating buffer or the cell preservation memory; and a selector selecting either one of the variation regulating buffer and the cell preservation memory from which a cell to be transmitted to a cell reproducer is read; regarding claim 12, a communication type discriminator discriminating a type of communication during a call set up phase and the setting the waiting time to the variation waiting timer depending on the discriminated communication type; regarding claim 31, a cell delay variation method in a cell assembly and disassembly apparatus, said cell delay variation method comprising the steps of temporarily storing, in a variation regulating buffer, cells transmitted from a VPI/VCI separator; controlling a waiting time from the time a top cell of a burst is received to the time a reading operation of a cell from the variation regulating buffer starts; storing, a cell preservation memory, the latest cell transmitted from the VPI/VCI separator; controlling intervals at which the cells are read from the variation regulating buffer or the cell preservation memory; and selecting either one of the variation regulating buffer and the cell preservation memory from which a cell to be transmitted to a cell reproducer is read; regarding claim 32, the step of discriminating a type of communication during a call set up phase

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and the setting the waiting time to a variation waiting time depending on the discriminated communication type.

Claims 1, 6 of U.S. Patent No. 5,774,466 disclose the following features: regarding claim 1, a regulation apparatus for ATM cell delay variation in an Asynchronous Transfer Mode (ATM) multiplex communication system, wherein multimedia information including sound, image, and data is transformed into cells upon transmission and transferred, and the cells are reproduced to original information upon reception, thereby performing a communication, said apparatus comprising: a delay variation regulating buffer for temporarily storing cells received from an ATM network; a variation waiting timer for controlling a waiting time which extends from the time a first cell of each burst communication is received by said delay variation regulating buffer to the time read-out of cells is started; a read-out timer for controlling intervals at which the cells are read out after the read-out of the cell is started; and communication type discriminating means for discriminating a type of communication to be performed for each of the cells based on the cell and for setting times appropriate to the discriminated communication type to said variation waiting timer and said read-out timer, respectively, wherein said communication type discriminating means sets the waiting time for regulating a delay variation to said variation waiting timer depending on the discriminated communication type; regarding claim 6, wherein said communication type discriminating means discriminates a communication type set in a call set-up request during a call set-up procedure to calculate a variation waiting time.

As stated above, Claims 1, 6 of U.S. Patent No. 5,774,466 disclose all the claimed limitations of claims 11, 12, 31, 32 of the instant application, except the features of: regarding claim 11, a cell preservation memory storing the latest cell transmitted from the VPI/VCI

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separator; and a selector selecting either one of the variation regulating buffer and the cell preservation memory from which a cell to be transmitted to a cell reproducer is read; regarding claim 31, storing, a cell preservation memory, the latest cell transmitted from the VPI/VCI separator; and selecting either one of the variation regulating buffer and the cell preservation memory from which a cell to be transmitted to a cell reproducer is read.

Yamada discloses a communication system comprising the following features: regarding claim 11, a cell preservation memory (FIG. 3, CELL BUFFER 1403) storing the latest cell transmitted from the VPI/VCI separator (FIG. 3, ADDRESS FILTER 110); and a selector selecting (FIG. 3, BUFFER SELECTOR 130) either one of the variation regulating buffer and the cell preservation memory (FIG. 3, CELL BUFFER 1403) from which a cell to be transmitted to a cell reproducer is read; regarding claim 31, storing, a cell preservation memory (FIG. 3, CELL BUFFER 1403), the latest cell transmitted from the VPI/VCI separator (FIG. 3, ADDRESS FILTER 110); and selecting (FIG. 3, BUFFER SELECTOR 130) either one of the variation regulating buffer and the cell preservation memory (FIG. 3, CELL BUFFER 1403) from which a cell to be transmitted to a cell reproducer is read. See column 1-5. It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the system of U.S. Patent No. 5,774,466, by using the features, as taught by Yamada, in order to provide a reliable system by not discarding cells when overflow is about to occur at an output buffer. See Yamada, column 2, lines 23-26.

Allowable Subject Matter

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3. Claims 13-20, 33-40 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 21-30 are allowed.


Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kwang B. Yao whose telephone number is 571-272-3182. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KWANG BIN YAO
PRIMARY EXAMINER


Kwang B. Yao
September 27, 2005